

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**Docket No. TSCA-07-2004-0084**

## Respondents

## Introduction

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), is the Chief, Radiation, Asbestos, Lead & Indoor Programs Branch, EPA, Region 7. The Respondents are Fidel Favela and Maria Favela, 7915 South 97<sup>th</sup> Circle, La Vista, Nebraska 68128.

Complainant's Allegations

Complainant has reason to believe that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Count I

1. Fidel Favela and Maria Favela ("Respondents") are individual persons.
2. For all periods of time relevant to the violation alleged herein, Respondents owned a residential property located at 5209 South 21<sup>st</sup>, Omaha, Nebraska (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. On or about January 1, 2001, Respondents entered into a rental agreement (the "Contract") with Dora Hernandez for the lease of Respondents' Property for residential use.
6. As a result of the Contract described in Paragraph 5 above, Respondents became the "lessors," and Dora Hernandez became the "lessee," as those terms are defined by 40 C.F.R. § 745.103.
7. Dora Hernandez subsequently moved into the Property.
8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.
9. Respondents did not provide an EPA-approved lead hazard information pamphlet to Dora Hernandez prior to being obligated under the Contract described in Paragraph 5 above.

10. Respondents' failure to provide an EPA-approved lead hazard information pamphlet to Dora Hernandez prior to being obligated under the Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondents admit that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admit nor deny Complainant's factual allegations above.

2. Respondents waive their right to contest Complainant's allegations above, and their right to appeal the Final Order accompanying this Consent Agreement.

3. Respondents and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty in the amount of Five Hundred Dollars (\$500) to be paid within forty-five (45) days of the effective date of the Final Order.

6. Respondents understand that their failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling

charge of \$15 will be imposed after 30 days and an additional \$15 will be charged for each subsequent 30-day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondents shall pay a civil penalty of Five Hundred Dollars (\$500) due within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency, Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Deanna Smith  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondents and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

**RESPONDENTS:**

FIDEL FAVELA AND MARIA FAVELA

Date: 1/9/03

By: Fidel Favela  
Fidel Favela

Date: 1/9/03

By: Maria Favela  
Maria Favela

**COMPLAINANT:**

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/15/04

By: Lynn M. Slugantz  
Lynn M. Slugantz  
Acting Branch Chief  
Radiation, Asbestos, Lead & Indoor Programs Branch

Date: 1/20/04

By: Kent Johnson  
Kent Johnson  
Senior Assistant Regional Counsel

**IT IS SO ORDERED.** This Final Order shall become effective immediately.

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer

Date: January 26, 2004

IN THE MATTER OF Fidel Favela and Maria Favela, Respondents  
Docket No. TSCA-07-2004-0084

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Fidel Fevela and/or Maria Favela  
7915 South 97<sup>th</sup> Circle  
La Vista, Nebraska 68128

Dated: 4/27/04

  
Kathy Robinson  
Regional Hearing Clerk